

MAINE HARNESS RACING COMMISSION
MINUTES OF MEETING
September 29, 2014
Gambling Control Board Conference Room
Department of Public Safety Building
45 Commerce Drive, Augusta, Maine

Commission Members Present: Barbara Dresser, Chair, James Tracy, Gary Reed, Michael Timmons and Commissioner Dirk Duncan.

Staff Members Present: Ron Guay, AAG, Henry Jackson, Miles Greenleaf, Carol Gauthier and Audrey Shorty.

Ellis Additon, Director, Bureau of Agriculture, Conservation and Forestry presented to Commissioner Tracy a plaque for his sixteen years of service to the Maine State Harness Racing Commission.

Ms. Perkins representing the Maine Standardbred Breeders and Owners Association asked to address the Commission on behalf of James Kelley. They would like to thank Commissioner Tracy for his dedication of the harness racing industry. They also wanted to thank you for all your support that he has given to the Maine Breeders Stakes for over the years.

Commissioner Dresser stated that they would like to give congratulations to Commissioner Reed for getting through the first step of the reappointment process. He has been confirmed by the Joint Committee and for William McFarland for his initial appointment.

ADJUDICATORY HEARINGS:

1. Commissioner Dresser stated that pursuant to MHRC Rule Chapter 19, Section 4, the Commission will take testimony on the request to re-open the Assignment of Race Dates for calendar year 2014 for the following applicant, HC Bangor LLC; Commercial Meet, and pursuant to MHRC Rule Chapter 19, Section 4, the Commission will take testimony on the request for three race dates for HC Bangor LLC for calendar year 2014. These race dates are to make up for the three dates lost earlier this year: April 29, May 5, and July 4. April 29 and May 5 were lost due to horse shortage and July 4 was lost due to weather. HC Bangor LLC is requesting October 9, 16 and 23, 2014. Attorney Guay stated that he would poll the Commissioners. Do any of the Commissioners have any reason why they would not be able to listen to the matters and give a fair judgment? Commissioners all responded with no. Attorney Guay asked if they have any specific knowledge of any of the issues that are being discussed here today that would prevent them from being able to hear testimony today and act only on the testimony here today. Commissioners all responded with no. Attorney Guay asked who is present from HC Bangor LLC. Michael Hopkins stated he is representing Bangor. Attorney Guay stated that Mr. Jackson, Executive Director, is representing the Department. He asked Mr. Jackson if this hearing was published in the newspapers. Mr. Jackson stated that it was published in the Bangor Daily News on September 19 and 22, 2014. Attorney Guay stated that he has a notice of hearing regarding this request by HC Bangor LLC to reopen the race day assignment hearing and obtain new dates. Was this notice of hearing circulated to the intervenors of record and by statute? Mr. Jackson stated that it was. Attorney Guay asked if there were any intervenors that plan to actively participate in this process. Mr. Sweeney stated that he would like to make a comment. Attorney Guay stated that Scarborough Downs would like to make comments in the public comments section. The original hearing occurred on November 16, 2013. In order to change any of the dates, from the original date in November, it's necessary to reopen the hearing. He asked for a motion from

one of the Commission members to reopen the race date hearing. Commissioner Tracy made a motion to reopen the race date hearing for the purpose of acting upon the request from HC Bangor LLC. Commissioner Timmons seconded. Attorney Guay asked for a vote. The vote was unanimous. He asked if there were any intervenors or any party that has any issue with this hearing. He did not see any objections to the prehearing motion. He asked for any witnesses that would be testifying to please stand up and raise their right hand. Bangor and Scarborough have been sworn in. Mr. Jackson entered the following exhibits. Exhibit 1, HC Bangor LLC request to change the dates; Exhibit 2, Notice of Hearing by email to parties; Exhibit 3, Hearing Ad and tear sheets and Exhibit 4, Agenda to email list. He recommends that the Commission award those three days with the understanding to not exceed ten dashes per day. Attorney Guay stated that was the conclusion of Mr. Jackson's testimony. He stated that the loss of race dates was April and May due to a horse shortage and July was due to weather. He asked if Bangor had any information to enter. Mr. Hopkins stated no. Commissioner Dresser stated as to her recollection as to the horse supply issue the horse shortage was in part due to the fact that notice didn't get out that horses were being looked for. We discussed other ways and tools that could be implemented in order to get word out when you were short of horses. She wanted to know what steps have been taken. Mr. Hopkins stated that last year was because of closure of the barns until the April meet. Hopefully this year we will keep them open. Commissioner Dresser wanted to know more about the race office after we suggested technology be used a little bit more to get the word out. Has anything been done to set up an email list. Have you checked with Linwood Perkins about being able to get in touch with the horsemen quicker? Mr. Hopkins stated that he has put the word out in the barns with the possibility of extending some October dates. Commissioner Dresser stated what she is looking for is on the day of the draw if you don't have enough horses how are you going to get in touch with people to let them know you need more. Mr. Hopkins stated that they call from the office. They have a PA system that goes to the barns and say we're short for a race coming up and can anybody bring horses in to race. Commissioner Dresser stated that what we talked about in the spring was the use of either e-mail or some sort of electronic communication so that you can contact 100 people in 20 minutes as opposed to making three phone calls in 20 minutes. Mr. Hopkins stated that they have online entries through the USTA. Commissioner Dresser stated that you have looked into that, excellent and you can send out notices through that system correct. Mr. Hopkins stated yes. Attorney Guay stated that this is the point where if any intervenors would like to put a case on and not public comment yet. Does any intervenor wish to introduce any witnesses, testimony or documents? Seeing none, he asked for public comment. Mr. Sweeney from Scarborough Downs addressed the Commission. He stated that they were not here to oppose Bangor's request of the Commission and the industry has been accommodating when we've needed to change their race dates and they intend to put forth the same courtesy. They are concerned about the impact of these additional dates on the horse population. They are going to be racing seven days a week during most of the month of October. They think the horse population is going to be tight. We're coming off of the end of one of the most stressful parts of the season on the horse population coming out of the fair season with the preclusion of Fryeburg next week. They are going to be entering into this spell without the benefit of the Maine Sire Stakes races which helped augment the overnight horse population. Although they do understand the desire of Bangor to add these dates in, we hope they will as well as we will be judicial in our use of the horse population with the Commission understanding that this will be more 8 race cards and maybe some shorter fields as we get through the month of October. That's not really the way that we should be aiming to put our cards together and he's hopeful that we can have some discussion going forward about ways to try to prevent these sorts of issues from occurring in the future. Attorney Guay stated that he would close the hearing. Commissioner Dresser asked for a motion. Commissioner Tracy made a motion to approve the request of HC Bangor LLC for the dates of October 9, 16 and 23, 2014 with a post time of 5:00 p.m. and be limited to no more than 10 races per card. Commissioner Reed seconded.

Commissioner Dresser asked for discussion. No discussion. She moved for a vote. Vote 5-0. Attorney Guay stated that he would have an order ready for signature today.

2 Commissioner Dresser stated that they have two matters regarding David Miller. Mr. Miller is alleged to have violated MSHRC Rule Chapter 11 Section 2 as the trainer of "Hawk's Cry Electra". A blood sample obtained following the Second Race at Scarborough Downs on May 11, 2014 disclosed the presence of an excessive level of Phenylbutazone. She also stated that he has a similar charge for "Luscious Leigh". A blood sample obtained from "Luscious Leigh" following the Second Race at Scarborough Downs on May 18, 2014 with the same substance. Attorney Guay stated that we are hearing 2014 six and seven. Mr. Jackson stated yes and Mr. Miller ask that the most recent alleged violation be included in today's agenda item. Attorney Guay asked if that was 19. Mr. Jackson stated that was correct. Attorney Guay asked if he had talked with council and if he would like to treat them separately. Mr. Jackson stated he would like to treat them all together. He would like to enter the evidence for all three and treat them as one violation. Attorney Guay stated that he would open the hearing in relation to three separate alleged violations 2014 MSHRC 0006, 2014 MSHRC 007 and 2014 MSHRC 0019 that is the purpose of this hearing. His understanding is that perhaps a notice of hearing was not issued on 2014 MSHRC 0019, is that correct. Mr. Jackson stated that is correct and he does believe that Mr. Miller is willing to waive the notice of hearing for 0019. Attorney Guay asked Mr. Childs if he is representing Mr. Miller. Mr. Childs stated yes. Attorney Guay asked Mr. Childs if he waived the notice of hearing under the Maine Administrative Procedures Act. Mr. Childs stated yes. Attorney Guay stated that we have a waiver which is permitted under our rules for the notice requirement that is required under the Maine Administrative Procedures Act. He asked the Commissioners if there is any reason why any Commissioner sitting here today by knowledge of the parties have any reason why they would not be able to be fair today. They all answered no. Attorney Guay stated that the five commissioners have indicated that they can be fair in relation to these three allegations. Do any of you have any specific knowledge of this matter that would make it difficult to hear evidence today and give a fair consideration of these charges? They all answered no. Attorney Guay stated that the commissioners have all indicated that they have no conflicts. At this point in time, we have already discussed the fact that there was no notice given in 2014 MSHRC 0019 but we have obtained a waiver. He asked if the parties have any other prehearing issues in terms of this hearing. Seeing none, he asked Mr. Jackson if he had received any request for intervention. Mr. Jackson stated no. Attorney Guay asked Mr. Jackson if his intent was to put his case on and hit all three cases at once. Mr. Jackson stated yes. Attorney Guay asked for the proposed exhibits. Mr. Jackson presented Exhibit 1, License application as Owner/Driver/Trainer for Mr. Miller; Exhibit 2, Race Program for May 18, 2014; Exhibit 3, Race Program for May 11, 2014; Exhibit 4, Copy of tag from Scarborough Downs on May 11, 2014 for the horse Hawk's Cry Electra; Exhibit 5, Copy of notice from LGC laboratory indicating excess level of bute sample #0041699; Exhibit 6, Laboratory tag for Luscious Leigh sample #0041751 signed by Mr. Miller; Exhibit 7, Certificate of analysis from LGC for sample #0041751; Exhibit 8, Notice of Positive Test and Suspension dated July 24, 2014 to Mr. Miller and signed receipt; Exhibit 9, Letter from Mr. Jackson to Mr. Miller indicating his request for a stay was granted; Exhibit 10, Letter from University of Florida indicating the analysis for sample #0041751; Exhibit 11, Letter from University of Florida indicating the test sample #0041699; Exhibit 12, Notice of Hearing with the signed return receipt; Exhibit 13, Copy of race program at Scarborough Downs on May 18, 2014, race 4; Exhibit 14, Sample tag from Scarborough Downs on May 18, 2014 regarding horse RD Misty sample tag #0041755; Exhibit 15, Letter from LGC certificate of analysis sample #0041755; Exhibit 16, Notice of Positive Test and Suspension to Mr. Miller with return receipt complaint #2014 MSHRC 0019; Attorney Guay asked if Mr. Childs if he objected to any of these exhibits. Mr. Childs did not object to the submission of any of the exhibits. Attorney Guay asked Mr. Jackson if he had any more

exhibits. Mr. Jackson stated no. Attorney Guay asked Mr. Childs if he had any exhibits to enter or does he want to wait during his case. Mr. Childs stated that he didn't have any exhibits he was going to make a reference to the United States Trotting Association's website where they have a special notice that had just gone out on Flunixin or Banamine alerting trainer's to changes. He thinks it's a factor of mitigation. Attorney Guay asked if he made copies of that. Mr. Childs stated that he did not. He stated that you could take judicial notice of it. Attorney Guay stated ok. He stated that Mr. Jackson would be going first. Mr. Childs stated that he would like to stipulate. Attorney Guay asked Mr. Childs what he wanted to stipulate to. Mr. Childs stated that we could just review the hearing notice where it spells out the specific issues to be decided. He was looking at the notice dated September 16, 2014 which he believes is the relevant one for today's purpose. Attorney Guay asked Mr. Jackson if he has any counts of conspiracy on any of these three complaints. Mr. Jackson stated no, he would ask the Commission to dismiss charge #4 and #5. Attorney Guay stated that the Department has moved that charges #4 and #5 in the notice of hearing be withdrawn and he would grant that motion. Mr. Jackson stated that in addition to that it would apply to 0019. Attorney Guay stated right. In relation to 0019 there are no allegations of conspiracy or fraud, correct. Mr. Jackson stated that is correct. Attorney Guay asked about unfitness to participate in racing. Is that charge in play in any three of these. Mr. Jackson stated that he would ask that that be dismissed as well. Attorney Guay stated that we do not have a notice of hearing for 0019 but the record will reflect for the purposes of the defendant that he is not facing any charges of conspiracy or fraud, and for the first two 006 and 007 the department has made a motion to drop the allegation of unfitness to participate in racing and he will grant that motion. In relation to 0019 that is not an issue before this Commission because we do not have a notice of hearing. Mr. Childs stated that we can stipulate that he is trainer of record for Hawk's Cry Electra, Luscious Leigh and RD Misty that those horses finished first on May 11 and May 18, 2014. Attorney Guay stated that the first stipulation is Mr. Miller is the trainer of record for all three of these violations. Mr. Childs stated yes. Attorney Guay asked Mr. Jackson if he objected to that stipulation. Mr. Jackson stated he does not. Attorney Guay stated that the next stipulation being that his horses in their races on May 11 and May 18, 2014 for the three violations won their races is that correct. Mr. Childs stated yes. Attorney Guay asked Mr. Jackson if he objected to that stipulation. Mr. Jackson stated no. Attorney Guay stated that they have two factual predicates down are there any others you'd like to stipulate. Mr. Childs stated that the trainer responsibility rule applies here and Mr. Miller is bound by that and that would be item three in the notice of hearing. Attorney Guay stated that there is a stipulation that trainer responsibility applies to each of the violations. He asked Mr. Jackson if he objections to that stipulation. Mr. Jackson stated no. Attorney Guay asked Mr. Childs if there were any other stipulations. Mr. Childs stated that they have already dealt with 4, 5 and 6. Attorney Guay asked if his client stipulates to the finding of these lab results. Mr. Childs stated yes, he does acknowledge that LGC lab results confirmatory was 9.3 in reference to 699 and 9.8 in reference to tag #751 and he makes editorial note that the University of Florida findings were his way of thinking substantially different but all of which exceeded the maximum level. Turning to the Misty horse there was no confirmatory split sample analysis done on the flunixin so the record is before the Commission is 28.9 nanograms of flunixin also known as banamine and the allowable limit is 20. Mr. Jackson stated that is correct. Mr. Childs stated that he is in excess of the allowable limit on that case as well. Attorney Guay asked Mr. Jackson what the specific rule chapter 11 was on all three of these. Mr. Jackson stated Chapter 11, section 2 for the 006 and 007 and Chapter 11, section 8 for 0019. Attorney Guay asked Mr. Childs if his client admit to a violation of Commission rules of Chapter 11, Section 2 on complaint # 2014 MSHRC 0006. Mr. Childs stated yes. Attorney Guay stated that the record reflects there is an admission of a violation and in pertaining to 2014 MSHRC 0007 does your client admit to a violation of Chapter 11, Section 2. Mr. Childs stated yes. Attorney Guay stated that the record reflects admission of a violation of Chapter 11, Section 2 pertaining to 0007 and finally in relation to

complaint #2014 MSHRC 0019 does your client admit to a violation of Commission rules Chapter 11, Section 8. Mr. Childs stated yes. Attorney Guay stated that the record reflects the admission of a violation of Chapter 11, Section 8 regarding allegation 0019, so it would seem that we have an admission of three violations. It would seem with deliberations would be limited to is what the consequences of what the violations are. Mr. Jackson stated yes. Attorney Guay stated because you have withdrawn the other so the factual predicates in terms of conspiracy and fraud are not before them, so he asked to do their usual bifurcation and call for a vote. Given the admission of the licensee of the violations before you consider your penalty phase that there be a motion and a second on finding a violation by the Commission. Commissioner Tracy made a motion that all three of the instances there is a violation of our rules. Attorney Guay asked Commissioner Tracy that would be for 0006 for violation of Chapter 11, Section 2, 0007 a violation of Chapter 11, Section 2 and 0019 for a violation of Chapter 11, Section 8. Is that correct? Commissioner Tracy stated yes. Attorney Guay asked for a second to that motion. Commissioner Timmons stated yes. Attorney Guay asked for a vote. It was unanimous. Vote 4-0. He also stated that this is where each party has the opportunity to make a statement as to the proposed discipline that would occur related to the findings. The violation has been found and how would you like to proceed. Mr. Jackson would you like to proceed. Mr. Jackson stated that he would recommend to the Commission that all three violations be treated as one as regards to the penalties. These are a violation of the control medication program. Being a first violation within a twelve month period, the penalty is 0 to 30 days suspension and \$0 to \$50 fine. Treating them as one, he would recommend to the Commission that they penalize Mr. Miller for 30 days with all 30 days suspended and a one hundred and fifty dollar fine. The horses would not be set down and he that he would be given thirty days which to return the three purses. He doesn't believe Mr. Miller did this purposely. In his discussions with Mr. Miller, he indicated as far as the Bute positives are concerned he got home late at night and gave the bute for the next day and it was within the 24 hour. As far as the flunixin, they are still having a little bit of an issue with that. This all occurred within the seven day period. Mr. Miller was not advised of his first violation until he got the second and they were noticed in the same notice. Therefore, he would recommend that the Commission find one violation. Attorney Guay stated that Mr. Miller through his counsel or directly make comments to the Commissioners as to leniency in terms of what they would hand down as punishment. Mr. Childs stated that if this were a matter before a court and Mr. Jackson and he agreed upon a disposition and they presented that to a court for acceptance or rejection would you proceed on that basis if you wish or he could give you an overview as to what the evidence establishes here and why that might lean towards something. Attorney Guay stated that Mr. Jackson hasn't been given the authority to negotiate dispositions and it's the power that has been retained by the Commissioners. The Commissioners may or may not agree with Mr. Jackson so it would probably be in your best interest to lay forth your arguments why assuming you agree with Mr. Jackson why they should vote that way. Mr. Childs stated that they agree with Mr. Jackson. Mr. Miller explained to him that in total it would be \$4,500.00 in purses that he would be required to return and doing that within 30 days is going to present a problem for him. As to these violations themselves, these horses are on the bute program and the rules do allow and the trainer's do utilize the bute program to assist their horses so that the horses are not racing with a great deal of pain or with inflammation. The horses in question Mr. Miller explains to him for Sunday races and on Saturday it's late and he feeds the horses and puts bute powder in the grain with the horse's grain. Some horses eat grain fairly quickly and some pick at it over the course of time. The initial testing at LGC labs showed a 6.2 and a confirmatory test showed a 9.3 and 9.8. Mr. Miller came to see him and he said they shouldn't be high this is how he has been doing it for 30 years. He doesn't know why all of a sudden after 30 years he's getting a positive test for this, so they did ask for a split sample. He paid \$1,200.00 to have the split sample conducted at the University of Florida with Margaret Wilding who was formerly reporting to this Commission in years gone by, and her test results were 7.0. The difference there is a little bit

unsettling, but the bottom line is that the results rendered by Dr. Sams and the results rendered by Ms. Wilding are all in excess of 5 nanograms maximum allowable bute level. Mr. Miller by way of history has one prior offense four years ago for roboxin which is given to people of horses for back pain. As to the banimine there's an ongoing chemical chemist question about what are the appropriate levels to use and how close to the race can you administer those medications. He was reviewing and was intending to bring with him but he would like to take judicial notice of it. There is a special notice on the USTA website regarding the administration of flunixin where they are modifying the recommendations for trainer's to go from 30 hours to 32 hours. The rules allow for us to help horses with these medications. The testing for the presence of drugs and the levels of drugs is an imprecise science where you have a 9.8 on one test and a confirmatory lab finds 7.0 as you can see these are not precise measurements. It is difficult for the trainer to access what an individual horse will metabolize the medication administered to it and it's difficult for the labs even with the very same material different labs coming up with different numbers. By way of mitigation, it's confusing for the horse trainers and the chemist. Mr. Miller didn't intend to do anything to cheat or he's not accused of being a fraud here, rather it's a common maintenance plan that many of our horses have to be on in order to perform. He would ask that the Commission treat Mr. Miller's violation with that background and understanding. Formerly, he believes Mr. Miller would have just received a warning letter for a situation such as this, but his understanding is that Mr. Jackson or the Commission has changed their protocol recently and he would ask Mr. Jackson if that is accurate. Mr. Jackson stated that previously the executive director would notify the veterinarian or the state steward if there was an excessive level of phenylbutyzone found in consulting with the trainer to see to it that it didn't happen again. Since last summer that is no longer a practice. Mr. Childs stated that Mr. Miller has been doing this for 30 years. He's had one previous violation before today and he has changed his protocol that he has used at his barn now. He no longer putting Bute in the grain when he returns home from racing one day before the next day he plans on racing. He apologizes and he's not planning on being before you again. Mr. Miller stated that he never gave these horses more than what they are allowed. The only problem here is the timing factor. He's always fed them Bute when he gets home and Saturday nights is usually an evening race and then Sunday is a day race and there was a missed calculation. He's not sure why this is showing up. Nothing was done deliberately to give a horse more than it's supposed to have which is Bute is 10 cc of liquid Bute and powder is two grams. Last week he asked four different people and three of them were vets on how far he is supposed to give it and he's had four different answers. Nothing was done deliberately. Attorney Guay asked if there were any questions for Mr. Jackson or the licensee by the Commissioner's. Commissioner Dresser asked Mr. Jackson is it the same penalty schedule for both the control medication and the NSAID violation. Mr. Jackson stated that he is interpreting it that way because the Commission has not adopted any penalty phase for the NSAID violations. Commissioner Dresser stated that they are treating it as part of the control medication program. Mr. Jackson stated that is how he is interpreting it at this point. Commissioner Dresser stated that she wanted to let the other Commission members realize we are using the old set of rules and not the ones that we adopted recently. Attorney Guay asked if there were any other questions. He stated that you have a recommendation made by Mr. Jackson. You can either use that for your starting point for your deliberations or you can create one. At this point he would turn it over to the Chair for deliberations and close the hearing on this matter. Commissioner Dresser asked for a motion. Commissioner Duncan stated that he would go along with the 30 day suspended and \$150 fine and not return the purses. Commissioner Dresser stated her understanding is that if we issue a fine that is considered a violation. As Attorney Guay has explained it to her, 'the shall' clause in Chapter 17, Section 6 kicks in and the rule says they shall suspend the horse and they shall require that the purses be forfeited. Attorney Guay stated the purses issue is one that there are other participants whose rights would be affected and the rule does say purses shall be forfeited and it does say the horses shall be suspended. Commissioner Dresser stated that at their last

meeting they did suspend the horse and then suspend the suspension. Attorney Guay stated that the thing to be mindful of one he thinks there is a general consensus among the Commissioners that these rules need to be looked at in the future. If you unsuspended the suspension of a horse, you're not effecting people directly where as if you undo a purse forfeiture you have all the other participants in the race that would otherwise in his opinion by rule would have a reasonable expectation that once a violation occurred that they would have redistribution of the purse. They would have standing, he thinks, to challenge the decision. They would be an aggrieved of party. Commissioner Dresser stated to Commissioner Duncan for the motion where you've covered Mr. Miller's personal suspension and you've covered the fine and you mentioned the purse. Commissioner Duncan stated that the horses not be suspended either. Commissioner Dresser stated that his motion would be. Commissioner Duncan stated that his motion would be \$150 fine, 30 days suspended for the trainer, Mr. Miller and the horses not to be suspended and no forfeiture of the purses. His reason for none forfeiture of the purses is, we have to have a broad mind in these situations. He thinks these rules the word "shall" is in there and it is a guideline. We have to use our common sense in each of these rules when there is a positive test. Commissioner Dresser asked for a second. She stated they have no second. That motion has failed. Do we have any other suggestions? Commissioner Timmons stated that we are talking about three positives and we need to understand that 30 years of experience and we need to know that the trainer's responsibility and we need to know what we've done in the past. We need to follow those guidelines very clear. He has a problem with not return the purse and he thinks the fine is very reasonable. If the fine was in there and the return of the purse was in there, he could be a little leaner on the trainer thing because he believes what the trainer said that he didn't intentionally do something. He's heard that on almost every single case that has come before them. Out of respect to him, he's not any different than the others but the fact of the matter is that he had three positive tests. When they have a positive test they've always had to return the purse and usually have got 30 days and usually the fine is more than what is here, particularly the three tests. Commissioner Dresser stated that looking at the schedule the first offense within any 12 month period calls for a 0 to 30 day suspension and a \$0 to \$50 fine. Even with the fine she thinks even if we consider it three violations we're within what the rules provide for and we're clearly within it with the suspension because it's 0 to 30 days. What she is struggling with the required suspension, she feels the suspension of the horse and the forfeiture of the purse. She feels the suspension of the horse is not a huge concern to her because clearly these medications and tests that were done in May we have no concern that it's still effecting the horses. She does feel that it's important that the purses be forfeited if nothing else out of fairness to the other participants. Commissioner Tracy made a motion that there be a suspension of 30 days all of which is suspended. The \$150 fine must be paid and all of the purses relating to the three races must be forfeited and payment should be made to the race commission for redistribution by no later than November 15th. The three horses be suspended for 30 days but then that would be suspended. Commissioner Dresser asked for a second. Commissioner Timmons seconded the motion. Commissioner Reed stated that in regards to the purse return he would ask to reconsider whether or not perhaps allowing the purse return to take place over 90 days would be accepted. Commissioner Dresser stated that earlier Mr. Childs made reference to the fact that he was going to raise this issue and she doesn't think he had a chance to before we finished up. Would it be possible to reopen the hearing briefly so that issue can be addressed? Attorney Guay stated sure and the issue is. Is it a legal argument? Commissioner Dresser stated for the time frame for the forfeiture of the purse money. Attorney Guay stated that they will reopen the hearing for the limited purposes of hearing legal arguments regarding for time for repayment of the purse. Mr. Childs stated that Mr. Miller explained to him that \$1600 a month in 90 days he can't quit afford that but he could pay the entire balance over 120 days. Attorney Guay closed the hearing and back to deliberations. Mr. Jackson stated that he appreciates Mr. Miller's situation; however, if these are not returned and redistributed before December 31st it will show up on his 1099 as income for the year and it is very

difficult to change that after that has occurred. He is running into an issue with that trying to notify the tracks that purses that have been returned to change their 1099 and unless they do the redistribution themselves they can't get into the system and change it. On behalf of Mr. Miller, he going to have to claim \$5,000 for 2014 on his 1099 and he probably won't want that knowing he not going to have that money. He would recommend going from where Commissioner Tracy was to December 15th that way he could get the purses redistributed and the tracks could make their adjustments. Commissioner Dresser asked Commissioner Tracy if he would like to amend his motion. Commissioner Tracy stated that he would like to amend his motion to change the date for returning purses from November 15th to December 15, 2014. Commissioner Timmons seconded. Commissioner Dresser asked for any other discussion. Commissioner Timmons stated that the people that were affected in that race will not get the redistributed money till after December 15th, is that correct. Mr. Jackson stated that is correct. Commissioner Timmons stated that means that from December 15th until January 1 all racing venues that were affected by these horses or by this redistribution of money needs to take place with those people and the income tax statement sent out to them have the correct amount on it. Will it still allow time for that to happen? Mr. Jackson stated yes. Commissioner Timmons stated that it would be between now and December 15th before that would take place. Mr. Jackson stated that would not take place until after December 15th when they are notified the money is available. Commissioner Dresser stated before the end of the year. She asked Mr. Jackson how the process works because the commercial tracks pay the driver 5% how is that component handled. Mr. Jackson stated that he tries to stay away from that because that becomes a nightmare. For example, an owner indicated to him that he already paid the driver and trainer so why would he pay the full purse because he only got 90% of it. He told him that's an issue he would have to take that up with the driver, trainer and track. We require the purse be returned and that's the purse indicated in the program. Commissioner Dresser stated that might be something we want to give some thought to down the road. She called for a vote. Vote 4-1 Commissioner Duncan opposed. Attorney Guay stated that he would like to make a quick observation to the Commission. Once you find a violation you are handcuffed until you change the rules and your decision's are subject to challenge by aggrieved parties. Another alternative is the use of consent agreement and those could be crafted differently. That's just an observation he thought he would make because we've had a couple of hearings where we are a little off the rules.

3. Commissioner Dresser asked about the complaint against Donna Sprague. Mr. Jackson stated that he's asking for a continuance of this matter. He is working with Ms. Sprague currently to have some analysis of feed samples conducted to see where the alleged violation occurred. Attorney Guay as hearing officer stated that he would grant the continuance.

UNFINISHED BUSINESS:

1. Commissioner Dresser stated that they have the two decisions and orders for approval. One is for Marc Mosher and one for Ryan Hall. Commissioner Tracy made a motion to approve the Decision and Order for Marc Mosher as written. Commissioner Reed seconded. Vote 5-0. Commissioner Dresser asked for a motion for Ryan Hall. Commissioner Tracy made a motion that the Decision and Order related to Ryan Hall be approved as written. Commissioner Timmons seconded. Vote 5-0.

NEW BUSINESS:

1. Commissioner Dresser stated that they will establish the Sire Stakes Advisory Committee for 2014-2015. She stated that they have been provided with seven names and they should be in the packets. Mr. Jackson stated that this list has been prepared by the president of the Maine Standardbred Breeders and Owner's Association Mr. Kelley. Last year, the Commission determined

that the committee should not exceed seven members. The only change is that Wally Watson has indicated that he does not want to serve another year so Mr. Hanley has accepted that responsibility. He read into the record the list which included James Kelley, Diann Perkins, Michael Hopkins, Francis Hanley, David Sawyer, Dennis Foss and Michael Cushing. Commissioner Dresser asked for a motion for approval of the list. Commissioner Duncan made a motion to accept the list as recommended by the Advisory Committee. Commissioner Timmons seconded. Vote 5-0.

REPORTS:

1. Mr. Jackson stated that Commissioner Dresser asked him to contact the OTB's and Bangor Raceway as it relates to the issue with the simulcast races originating at Scarborough Downs and being received by the facilities. He talked with Mr. Sagris, Mr. Hopkins, Mr. Barberino and Ms. Nault at Lewiston and the four OTB's have indicated to him that it was not an issue. Bangor has not installed the device and he doesn't think they need to install the device. He also stated that Scarborough has graded their track and it is in excellent condition. The horsemen are not happy for the fact that they cannot train on it and the back side has been an issue with them for being sloppy. He told them to contact management at Scarborough as it relates to the track. Commissioner Dresser stated that she believed it has been corrected. Mr. Jackson stated that he has visited the racetracks this summer and everything is going fairly well and the handle is not where he intended it to be. He does believe the economy has a direct impact on that. The Sire Stakes program is going very well. It looks like we are going to come in on target with their anticipated revenues versus their expenditures. Mr. Jackson stated that the other complaints that have been filed against the horsemen, we have several of those still pending due to the fact of split sample testing and DNA analysis. Commissioner Dresser asked Mr. Jackson to update everyone on the testosterone. Mr. Jackson stated that his conversation with one of the other laboratories that was recommended to do the split sample testing indicated that there were several split samples that were being forwarded from the laboratory that was doing their analysis. They decided that they would be doing the split sample testing on their own and paying for it. The cost is anywhere from \$800 to \$1250 per sample and he thinks there are four samples out there. One of the horses that came up positive for elevated testosterone levels was supposed to be a gelding until upon further examination and there was an undescending testicle male so that case has been dropped and there were three reported violations. Because of the examinations results those are not being pursued. The others are being pursued. One is a mare and has been examined and he is waiting for the report on that one and the other two are geldings and those will be tested. Commissioner Reed stated that when they had their meeting at Windsor Mr. Morrison indicated in his testimony that he had paid \$450 for a split sample. Commissioner Dresser stated that the split samples have always been at least \$600. Mr. Jackson stated that it depends on the laboratory that we use and depending on the drug that they're analyzing. Any of your hormones or AG substances are a lot more expensive because they're looking at the quantitative aspect not the presence of. Commissioner Dresser stated to Commissioner Reed that he might be thinking of the DNA testing which was slightly less. Mr. Jackson stated that the DNA is \$325 and the split sample depending on what the drug is and the laboratory that you use changes. You have to use an ISO approved certified laboratory which is apples to apples.

OTHER BUSINESS:

1. Commissioner Dresser stated that they will establish Off-track Betting and Live Racing License Renewals and Race Date Assignment Hearings. After a brief discussion, it was recommended that on October 9th the Commission would have their regular meeting, public hearing on rule changes on October 22nd and race dates, OTB and approval of licenses and race date assignments on November 5th.

Commissioner Dresser stated that their practice for many years has been when they have a medication violation that they have an automatic suspension of 30 days. Now that suspension has no bearing necessarily on the medication penalty guideline. It is just statutorily provided that a 30 day immediate suspension can happen. She stated that she would like Attorney Guay to research whether or not that 30 day suspension is required because what she would like to see, if it's not, that maybe for the non-blood doping categories that we not suspend immediately and let the process take its course. If we find a violation, then we would worry about suspension but not have people who are sitting out waiting for us to schedule a hearing. His is going to check into it to see whether or not if the statutes even allow them to go that route. She recalls initially that his thought was that we may suspend immediately but we're not required to. Attorney Guay state that they have the power to suspend for 30 days. If you've got a license it requires an emergency situation where the public is going to be harmed. He hasn't seen anywhere but he hasn't finished his research where it has to happen. Mr. Jackson stated that the Commission may. Attorney Guay stated that at least in the enabling statutes, he hasn't seen it in any rules and he certainly hasn't seen it in the harness racing statute. He's thinking it's an artifact of what you've always done.

PUBLIC COMMENT:

Commissioner Dresser asked for public comment. Ms. Perkins stated that she would like to share the mares bred list with them. She was worried that the numbers would be less than 100 but they have 135 horses on the list. She stated that finals are going to be held on October 11, 2014 at Scarborough Downs. Bangor is going to be hosting the consolation finals on October 17, 2014. The two year old finals were very successful. She stated that they do have a situation that has to be made a rule and that the money that comes from Oxford they receive none for the Sire Stakes Fund for their promotion. That is in Chapter 9 and it needs to be done immediately. Commissioner Dresser stated that she didn't follow the first one. Ms. Perkins stated that in Chapter 9 they receive either 5% or anything over \$10,000 for the promotion of the Sire Stakes Fund and the money comes from money put into the Sire Stakes Fund from Bangor from the live handle. We made a mistake when we did not put the money from Oxford in there. Mr. Jackson stated that when we calculate the amount of money available for the promotional fund for the MSBOA the dollars generated at Oxford are not included. Commissioner Dresser asked if that was statutorily driven. Mr. Jackson stated no. It has to be done by rule. Ms. Perkins stated that is extremely important. Mr. Jackson stated that the two year old finals and the consolation have all cleared. The LGC laboratory tested for drugs and cobalt and have the samples been cleared. Commissioner Dresser asked if those purses have been distributed. Mr. Jackson stated that he notified Scarborough two weeks ago to release the purses.

Ms. Perkins stated she would like you all to be aware that former Stan Kuklinski passed away. She believes his funeral is Friday. Mr. Jackson stated that he apologizes for not bringing that up to the Commission. Commissioner Dresser asked if anyone else had anything.

Commissioner Timmons stated that they did have a large contingency of Commissioners and dignitaries in the winner's circle at Cumberland Fair at one time. They had a very special day for Don Richards and for the entire fair. There was one accident and no one was injured because the horse got tangled up in the fence. For the most part, the sun was shining and they had a wonderful fair. Commissioner Dresser stated that they also had a notable occurrence later that day and it was a show of horsemanship. They had a driver loose the outside line going to the $\frac{3}{4}$ pole and they got the horse stopped with no harm done to anyone.

Ms. Perkins stated that they need to put into the rule which is not in there we need to require that their horsemen wear flap jackets. Commissioner Dresser stated that the proposed rules that her committee

worked on which we are going to have a public hearing on it is in it. Ms. Perkins stated that Mr. Campbell told her that the doctors said to him if he hadn't had that flap jacket on the accident would have been much serious because he did injure his liver and broke three ribs. Commissioner Dresser asked for a motion to adjourn.

Commissioner Tracy made a motion to adjourn. Commissioner Timmons seconded.

The meeting adjourned at 11:40 a.m.

Respectfully submitted by:

Henry W. Jackson

Executive Director